WP(C) 862/2007
BEFORE
HON'BLE JUSTICE RANJAN GOGOI
.
J U D G M E N T

1. The petitioner who is the Secretary of the Gauhati Medical College & Hospital assails an order dated 22.11.2006 by which he has been placed under suspension.

2. The facts in brief may be noticed at the outset. Panbazar P.S. Case No.304/2005 under Sections 419/420/423/468/471/472/120(B), IPC, was registered on the basis of a F.I.R. lodged by one Badrul Islam, S.I. of Police. In the F.I.R. filed it was stated that on 14.6.2005 information was received vide Panbazar P.S. GDE No.546 dated 14.6.2005 that one Bipin Talukdar of Bongora, P.S.- Palasbari had been harbouring/aiding ULFA members operating in Guwahati City and incriminating documents of the banned outfit are being kept and concealed in his house. In the FIR filed, it was further stated that in course of the search operations though no ULFA related documents could be found, 98 numbers of Pension Payment Orders under the Guwahati Treasury, registers containing payment list of pensioners and some other papers containing a list of persons in receipt of such pension, besides the official seal of the Superintendent and Deputy Superintendent of the Gauhati Medical College & Hospital as well as some Treasury documents were recovered from the house of the aforesaid Bipin Talukdar. On the basis of the FIR filed and case registered the police arrested several persons. The petitioner who, as the Secretary of the Gauhati Medical College & Hospital was also one of the Drawing and Disbursing Officers, filed an anticipatory bail application before this Court i.e. Bail Application No.2248 of 2006. By order dated 20.9.2006 this Court granted pre-arrest bail to the petitioner in connection with Panbazar P.S. Case No.304/2005. Thereafter, on 8.11.2006 the Officer-in-charge of Panbazar Police Station informed the Principal of the Gauhati Medical College & Hospital about the bail granted to the petitioner in connection with the Panbazar P.S. Case No.304/2005. The Principal of the Medical College & Hospital, in turn, by letter dated 13.11.2006 informed the said fact to the Government whereafter on 21.11.2006 the Deputy Secretary to the Govt. of Assam, Health and Family Welfare (B) Department, required the Director of Medical Education, Assam, to place his specific view in the matter, particularly with regard to the feasibility of initiation of a departmental proceeding against the petitioner. In the meantime, on 23.11.2006, the Principal of the Gauhati Medical College & Hospital informed the Director of Medical Education, Assam that after grant of pre-arrest bail to the petitioner and on expiry of earned leave of the petitioner on 27.9.2006, the petitioner had joined his duties on 28.9.2006. However, the Principal had not entrusted the petitioner with the duties of the Drawing and Disbursing Officer and was performing the said duties by himself. As the same was felt to be convenient the Principal of the Medical College suggested that the petitioner be replaced by a new Secretary to whom the powers of the Drawing and Disbursing Officer could be entrusted. On receipt of the said letter of the Principal dated 23.11.2006, the Director of Medical Education, Assam, by his communication dated 6.12.2006 addressed to the Secretary to the Govt. of Assam, Health and Family Welfare(B) Department, proposed the transfer of the petitioner from the Gauhati Medical College & Hospital to some other institution. While the matter was so situated, on 27.12.2006 the petitioner was placed under suspension by an order issued under the signature of the departmental Secretary. Thereafter, directions were issued for drawing up a departmental proceeding against the petitioner and to enable the concerned authority to do so a letter dated 2.3.2007 was addressed by the Deputy Secretary to the Govt. of Assam, Health and Family Welfare (B) Department to the Superintendent of Police, Kamrup Metro, requiring the said latter authority to inform the Health Department of the details of the police case in question so as to facilitate drawal of departmental proceeding against the

petitioner. Admittedly, till date, no departmental proceeding has been drawn up against the petitioner. It is in these circumstances that the petitioner has made the present approach for interference with the order of suspension dated 27.12.2006.

3. The respondents have filed an affidavit in the case in order to justify the impugned action placing the petitioner under suspension by the order dated 27.12.2006. The elaborate affidavit filed by the departmental Deputy Secretary merely recites the facts and circumstances leading to the suspension of the petitioner without offering any cogent explanation as to why the suspension of the petitioner was felt necessary except that the petitioner had obtained pre-arrest bail in connection with Panbazar P.S. Case No.304/2005. The extent of the petitioner's involvement in the said police case has also not been spelt out in the affidavit filed. Rather, the statements made in the affidavit would go to show that after the petitioner was placed under suspension on 27.12.2006, a letter dated 2.3.2007 has been addressed by the Deputy Secretary to the Superintendent of Police, Kamrup Metro, asking for information with regard to the involvement of the petitioner in the criminal case, as already noticed.

4. The Court to satisfy itself as to the extent of involvement of the petitioner, if any, with the aforesaid police case required the learned Govt. Advocate, Assam, to place before the Court the Case Diary of Panbazar P.S. Case No.304/2005. A perusal of the Case Diary revealed that though a large number of persons examined in connection with the case under Section 161, Cr.P.C. including the main accused Bipin Talukdar, none of the aforesaid persons had implicated the petitioner, in any substantial manner, showing his involvement with the ongoing scandal with regard to fraudulent drawal of pension in the Gauhati Medical College & Hospital. However, perusal of the Case Diary revealed that certain bills, vouchers, accounts and registers purportedly signed by the petitioner as the Drawing and Disbursing Officer were seized by the police in course of the investigation of the case. The specimen handwriting and signatures of the petitioner were also taken in the course of investigation. In the meantime the seized records along with the specimen handwritings and signatures of the petitioner were sent to the Handwriting Expert in the Forensic Science Laboratory to ascertain whether the signatures and handwritings in the seized documents were those of the petitioner. The Court, therefore, directed that the report of the Handwriting Expert be placed before it. The said report along with the seized documents in original and the specimen handwritings and signatures of the petitioner have been placed before the Court. In this regard, specific notice must be taken that 201 numbers of documents marked as Q/1 to Q/201 which were seized and alleged to be in the handwriting of the petitioner were sent to the Handwriting Expert alongwith 10 specimen handwritings and signatures of the petitioner marked as S/1 to S/10. The report of the Handwriting Expert of the State Forensic Science Laboratory, Guwahati dated 23.8.2007, as placed before the Court, goes to show that the writings and the signatures in documents marked Q/1 to Q/201 do not have any similarity or familiarity with the writings and signatures of the petitioner marked as S/1 to S/10.

The departmental records showing the decision making process leading to the impugned suspension of the petitioner were also placed before the Court by the learned Standing Counsel, Health Department. The eventual order of suspension was recorded by the departmental Minister. A perusal of the note-sheets leading to the order of the departmental Minister goes to show that the suspension of the petitioner was felt necessary only because there was a case of fraudulent drawal of pension in the Gauhati Medical College & Hospital involving a huge amount of public money. No specific details of the involvement of the petitioner has been recorded in the said original record/file placed before the Court.

5. The facts stated above make it abundantly clear that the present stage of investigation of Panbazar P.S. Case No.304/2005 does not show any involvement of the petitioner with the offences alleged in the said case. Admittedly, the pe

titioner has been suspended on account of the said case. The learned departmental counsel has submitted that the petitioner had absconded after registration of Panbazar P.S. Case No.304/2005 and had obtained anticipatory bail which facts should be taken note of by the Court as an admission on the part of the petitioner of his involvement in the said police case. While it is correct that the petitioner obtained anticipatory bail in connection with Panbazar P.S. Case No.304/2005, such action of the petitioner can be reasonably explained by an apprehension that the petitioner may be arrested as he happened to be the Secretary of the Medical College and one of the Drawing and Disbursing Officers. However, in a situation where the Case Diary till date, the report of the Handwriting Expert as well as the departmental file maintained in the regular course of Governmental business do not show any involvement of the petitioner with the case in question, it will be difficult for the Court to hold that the suspension of the petitioner for any further period will be justified in law.

6. For the aforesaid reasons, I allow this writ petition, set aside the order of suspension dated 27.12.2006 and direct that the petitioner should forthwith be reinstated providing all consequential benefits as may be due with liberty, however, to the respondents to give such suitable and proper posting to the petitioner as may be considered necessary in the facts and circumstances of the case. This will be done by the respondents within seven days from the date of receipt of a certified copy of this order.

Writ petition, consequently, is allowed as indicated above.